

2. By separate letter the report is being filed with USFWS, again pursuant to paragraph 15(b)(ii) of the plea agreement.

DATED this 16th day of December, 2019.

**Defendant PacifiCorp Energy,
a division of PacifiCorp**

/s/ Stuart R. Day

Stuart R. Day WSB #5-2244
Williams, Porter, Day & Neville, P.C.
159 North Wolcott, Suite 400 (82601)
P.O. Box 10700
Casper, WY 82602
Telephone: 307-265-0700
Facsimile: 307-266-2306
sdlay@wpdn.net

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the follows *Mandatory Report Filing* was served by U.S. mail and was delivered to the Court via the CM/ECF System and thereby served upon counsel via electronic transmission this 16th day of December, 2019 and addressed as follows:

David A. Kubichek
U.S. Attorney's Office
P.O. Box 22211
Casper, WY 82601

Mark A. Klaassen
U.S. Attorney's Office
P.O. Box 668
Cheyenne, WY 82003

John C. Cruden
Environment and Natural Resources Division
U.S. Department of Justice
620 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Robert S. Anderson
Environmental Crimes Section
105 East Pine Street
Missoula, MT 59083

Kerry J. Jacobson
U.S. Attorney's Office
P.O. Box 449
Lander, WY 82520

/s/ Stuart R. Day

Stuart R. Day



BRET W. REICH
Vice President, General Counsel
1407 West North Temple
Salt Lake City, Utah 84116
Direct Dial: (801) 220-4337
bret.reich@pacificorp.com

Re: Case Number: 14-CR-301-KHR

PacifiCorp submits this report as part of its mandatory conditions of probation. The report identifies the progress PacifiCorp made during the past 12 months implementing the Migratory Bird Compliance Plan (“MBCP”) filed December 22, 2014.

After entry of the plea agreement, PacifiCorp met with representatives of the U.S. Fish & Wildlife Service (“USFWS”) to prioritize the requirements of the MBCP. PacifiCorp will report on the progress made in the order the parties agreed to prioritize the MBCP conditions.

- 1. Eagle Conservation Plans (“ECPs”).** PacifiCorp and USFWS initially agreed on a schedule for PacifiCorp to submit ECPs for Seven Mile Hill, Dunlap, High Plains/McFadden Ridge and Glenrock/Rolling Hills (“the Wind Facilities”). During review of the ECPs, PacifiCorp and USFWS agreed additional mortality monitoring data was required for the development of the Seven Mile Hill and Glenrock/Rolling Hills wind facilities. The Parties agreed that PacifiCorp would reformat the existing ECPs to align with Region 6 outline guidance and review the Dunlap I draft ECP initially. The Dunlap I ECP was completed in October 2018 and the eagle take permit application for the project was submitted on October 25, 2018. Glenrock/Rolling Hills ECP is still under review, however it is anticipated to be completed in November 2019 based on the agreed timeline. The eagle take permit for Glenrock/Rolling Hills was submitted on March 7, 2019. The remaining ECPs will likely be re-drafted to streamlined versions to follow the USFWS Region 6 updated ECP guidance issued on July 22, 2019.

Progress Made: The Dunlap I ECP review was completed and the eagle take permit application was submitted to USFWS on October 25, 2018. The Dunlap Environmental Assessment is anticipated to be released for public comment in fall 2019. PacifiCorp and USFWS continue to collaborate on the ECP development and have entered into a Reimbursable Agreement for the remaining projects (Glenrock/Rolling Hills, Seven Mile Hill, High Plains, and McFadden Ridge) to support the eagle take permit application processes. The Glenrock/Rolling Hills ECP review is anticipated to be completed in November 2019 and the eagle take permit application was submitted on March 7, 2019.

- 2. Bird and Bat Conservation Strategies (“BBCSs”).** PacifiCorp and USFWS were to agree on a schedule for PacifiCorp to submit BBCSs for the Wind Facilities. PacifiCorp previously submitted the Seven Mile Hill draft BBCS for review. Upon completion of the review by USFWS staff, PacifiCorp will revise, as appropriate, and submit the remaining draft BBCS documents for review.

Progress Made: PacifiCorp and USFWS agreed on the above schedule. PacifiCorp submitted the BBCS for Seven Mile Hill and the review is currently in process. All BBCS documents will be updated as needed based on additional usage data currently be collected (ie mortality monitoring) and agreed upon USFWS recommendations.

3. **Nest Searches.** PacifiCorp agreed to conduct nest searches by June 19, 2019 using the updated protocols in agreed to by USFWS and PacifiCorp on May 1, 2015.

Progress Made: Preliminary searches for all Wind Facilities began in January 2019. Aerial flights occurred in March and May 2019. Follow-up ground surveys were performed into August 2019, as appropriate.

4. **Nest Search Protocol.** PacifiCorp and USFWS agreed to nest search protocols on May 1, 2015. No additional protocol changes were identified/requested in 2019.
5. **Mortality Monitoring.** PacifiCorp and USFWS were to determine a schedule by June 19, 2015 for PacifiCorp to provide USFWS with the mortality monitoring protocols currently in use and all mortality monitoring data collected at the Wind Sites. Within three months after sharing the protocols, the parties were to collaborate and agree on any changes to the protocols necessary to insure that scientifically-based protocols.

Progress Made: PacifiCorp and USFWS agreed to mortality monitoring protocols on August 26, 2015. PacifiCorp increased mortality monitoring to 100% of turbines, once per month, at the Glenrock/Rolling Hills and Seven Mile Hill wind projects beginning in January 2016. Monitoring at Dunlap and High Plains/McFadden Ridge was performed at 33% of turbines once per month. No additional protocol changes were identified/requested in 2019 and the monitoring is ongoing.

6. **Informed Curtailment.** PacifiCorp agreed to start the Initial Informed Curtailment Protocol in Attachment 2 of the MBCP.

Progress Made: For 2019, PacifiCorp started the Informed Curtailment Protocol in Attachment 2 of the MBCP on January 1, 2019. PacifiCorp added one month (December) of informed curtailment at the Seven Mile Hill project beginning in 2015 based on identified golden eagle usage.

7. **Avian Use Study Data.** PacifiCorp and USFWS were to determine a schedule by April 19, 2015 for PacifiCorp to voluntarily provide avian use data and discuss additional studies as agreed upon.

Progress Made: PacifiCorp provided the data on May 31, 2015. No additional avian usage data were requested in 2019.

8. **Experimental Advanced Conservation Practices.** PacifiCorp agreed to propose a date to meet with USFWS to discuss progress of the experimental ACPs.

Progress Made: PacifiCorp provided periodic updates on informed curtailment activities throughout the year on bi-weekly conference calls.

9. **Pole Retrofit Plan.** PacifiCorp and USFWS were to determine a schedule for PacifiCorp and USFWS to collaborate and jointly develop a pole retrofit plan.

Progress Made: PacifiCorp and USFWS met on June 3, 2015 in Lakewood, Colorado. PacifiCorp provided an overview of PacifiCorp's current retrofit process and provided a retrofit plan with the Dunlap I eagle take permit application. PacifiCorp retrofitted 75 power poles in response to eagle mortalities found in 2018 at the Dunlap, Seven Mile Hill, and Glenrock/Rolling Hills wind facilities.

10. **SPUT Permit.** PacifiCorp agreed to apply for SPUT permits by April 19, 2015.

Progress Made: PacifiCorp obtained a SPUT permit for all of the Wind Facilities for 2019 and provides quarterly/annual reports on avian mortality to USFWS staff.

11. **Audible Sound and Visual Light Deterrent Test at Glenrock/Rolling Hills.** PacifiCorp agreed to complete the deterrent test at Glenrock/Rolling Hills and provide a final report to USFWS.

Progress Made: The deterrent test was completed in March 2015 and a final report was provided to USFWS on July 30, 2015. No additional testing was performed in 2018. PacifiCorp had been in discussions with the American Wind and Wildlife Institute (AWWI) to test a similar detection and deterrence product at a PacifiCorp owned wind project in Wyoming beginning in 2018. However, in early 2018 AWWI decided to change the test location to project located in southern Washington and no further testing will occur at Wyoming projects as this time.

12. **Written Accounting of Monies Spent.** PacifiCorp agreed to provide a written accounting of monies spent during the previous calendar year to implement the MBCP by March 15 of each year.

Progress Made: PacifiCorp provided the accounting information for 2018 by March 15, 2019.

13. **Annual Meeting with DOJ/USFWS.** PacifiCorp agreed to meet with DOJ and USFWS staff bi-annually in 2015 and 2016 and annually for the remaining agreement term to discuss the status of PacifiCorp's compliance with the MBCP.

Progress Made: PacifiCorp held bi-annual meetings in 2015 and 2016 and an annual meeting in 2017 and 2018. For 2019 PacifiCorp held an annual meeting with DOJ and USFWS staff on October 24, 2019.